



National Aeronautics and
Space Administration
Washington, DC 20546

Procurement Class Deviation

PCD 21-03

October 1, 2021

CLASS DEVIATION FROM THE FEDERAL ACQUISITION REGULATION (FAR) FOR EXECUTIVE ORDER 14042, ENSURING ADEQUATE COVID SAFETY PROTOCOLS FOR FEDERAL CONTRACTORS

PURPOSE: To provide a procurement class deviation (PCD) from the FAR to implement the requirements of Executive Order (E.O.) 14042, Ensuring Adequate COVID Safety Protocols for Federal Contractors, signed by the President on September 9, 2021 (and published in the Federal Register on September 14, 2021 at 86 FR 50985).

GUIDANCE: E.O. 14042 directs executive departments and agencies, including independent establishments subject to the Federal Property and Administrative Services Act, 40 U.S.C. § 102(4)(A), to ensure that covered contracts and contract-like instruments include a clause requiring contractor and any subcontractors (at any tier) to comply with all guidance for covered contractor or subcontractor workplace locations as published by the Safer Federal Workforce Task Force at: <https://www.saferfederalworkforce.gov/contractors/>.

The actions directed by this E.O. will ensure that contractors and any subcontractors (at any tier) contracting with the Federal Government will provide COVID-19 safeguards in workplaces with employees working on or in connection with a Federal Government contract or contract-like instrument. These workplace safety protocols will apply to all contractors and any subcontractors (at any tier) in covered contractor workplaces who are not working on a Federal Government contract or contract-like instrument. These safeguards will decrease the spread of COVID-19, which will, in turn, decrease worker absences, reduce labor costs, and improve the efficiency of contractors and subcontractors performing work for the Federal Government.

The Department of Defense (DoD), General Services Administration (GSA), and NASA have started the formal rulemaking process to incorporate this change into the FAR. These rulemaking changes will be published in the Federal Register via FAR Case 2021-021, Ensuring Adequate COVID-19 Safety Protocols for Federal Contractors, to make appropriate amendments in the FAR to include the requirements of this E.O..

The FAR Council and OFPP provided direction to agencies for the incorporation of a clause in solicitations and contracts in the memorandum titled "Issuance of Agency Deviations to Implement Executive Order 14042", dated September 30, 2021, found here: <https://www.whitehouse.gov/wp-content/uploads/2021/09/FAR-Council-Guidance-on-Agency-Issuance-of-Deviations-to-Implement-EO-14042.pdf>. NASA implementation is set forth in the deviation clause enclosed in this PCD.

In accordance with the Safer Federal Workforce Task Force Guidance (Task Force Guidance), which states in part "...agencies are strongly encouraged to incorporate a clause requiring compliance with this Guidance into contracts that are not covered or directly addressed by the order...", NASA has decided to incorporate the clause requiring compliance with this Task Force Guidance into acquisitions that are not covered or directly addressed by this E.O. in order to maximize the goal of getting more people vaccinated and decrease the spread of COVID-19.

ACTION REQUIRED BY CONTRACTING OFFICERS: Effective immediately and no later than October 15, 2021, for commercial and non-commercial acquisitions that include requirements for services, supplies, research and development, construction, and end-items, insert the attached clause in the following:

- All new solicitations and resulting contracts, orders, blanket purchase agreements (BPAs), and cooperative agreement notices and resulting cooperative agreements above the micro-purchase threshold (MPT) issued on or after the effective date of this PCD;
- All existing contracts, orders, BPAs, and cooperative agreements, above the simplified acquisition threshold (SAT) via a bilateral modification; and
- All solicitations above the MPT issued prior to the effective date of the PCD.

The use of this clause shall be excluded from the following:

- Solicitations and contracts with Indian Tribes under the Indian Self-Determination and Education Assistance Act (Public Law 93-638) (does not apply to a procurement contract or subcontract under the FAR to an Indian-owned or tribally-owned business entity); and
- Solicitations and contracts if performance is outside the United States or its outlying areas (limited to employees who are performing work only outside the U.S. or its outlying areas).

EFFECTIVE DATE: This PCD is effective as dated and shall remain in effect until it is incorporated into the FAR, or until this class deviation is otherwise rescinded.

CLAUSE CHANGES: FAR clause 52.223-99 (Deviation 21-03).

HEADQUARTERS CONTACT: Geoffrey Sage, NASA FAR Supplement (NFS) Manager, 202-358-2420, email: geoffrey.s.sage@nasa.gov.

Karla Jackson
Digitally signed by Karla Jackson
Date: 2021.10.01 13:48:29 -04'00'

Karla Smith Jackson
Assistant Administrator for Procurement

Enclosure

FAR Deviation Text Additions shown in [bold brackets]; Deletions shown as ~~strike throughs~~; and FAR text unchanged shown as asterisks * * * or * * * * *.

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PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

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Subpart 52.2—Text of Provisions and Clauses

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[52.223-99 Ensuring Adequate COVID-19 Safety Protocols for Federal Contractors.

ENSURING ADEQUATE COVID-19 SAFETY PROTOCOLS FOR FEDERAL CONTRACTORS (DEVIATION 21-03)

(a) *Definition.* As used in this clause -

United States or its outlying areas means—

- (1) The fifty States;
- (2) The District of Columbia;
- (3) The commonwealths of Puerto Rico and the Northern Mariana Islands;
- (4) The territories of American Samoa, Guam, and the United States Virgin Islands; and
- (5) The minor outlying islands of Baker Island, Howland Island, Jarvis Island, Johnston Atoll, Kingman Reef, Midway Islands, Navassa Island, Palmyra Atoll, and Wake Atoll.

(b) *Authority.* This clause implements Executive Order 14042, Ensuring Adequate COVID Safety Protocols for Federal Contractors, dated September 9, 2021 (published in the Federal Register on September 14, 2021, 86 FR 50985).

(c) *Compliance.* The Contractor shall comply with all guidance, including guidance conveyed through Frequently Asked Questions, as amended during the performance of this contract, for contractor or subcontractor workplace locations published by the Safer Federal Workforce Task Force (Task Force Guidance) at <https://www.saferfederalworkforce.gov/contractors/>.

(d) *Subcontracts.* The Contractor shall include the substance of this clause, including this paragraph (d), in subcontracts at any tier that exceed the micro-purchase threshold, as defined in Federal Acquisition Regulation 2.101, performed in whole or in part within the United States or its outlying areas.

(End of clause)]



ACQUISITION
AND SUSTAINMENT

OFFICE OF THE UNDER SECRETARY OF DEFENSE

3000 DEFENSE PENTAGON
WASHINGTON, DC 20301-3000

In reply refer to
DARS Tracking Number: 2021-O0009

MEMORANDUM FOR COMMANDER, UNITED STATES CYBER
COMMAND (ATTN: ACQUISITION EXECUTIVE)
COMMANDER, UNITED STATES SPECIAL OPERATIONS
COMMAND (ATTN: ACQUISITION EXECUTIVE)
COMMANDER, UNITED STATES TRANSPORTATION
COMMAND (ATTN: ACQUISITION EXECUTIVE)
DEPUTY ASSISTANT SECRETARY OF THE ARMY
(PROCUREMENT)
DEPUTY ASSISTANT SECRETARY OF THE NAVY
(PROCUREMENT)
DEPUTY ASSISTANT SECRETARY OF THE AIR FORCE
(CONTRACTING)
DIRECTORS, DEFENSE AGENCIES
DIRECTORS, DEFENSE FIELD ACTIVITIES

SUBJECT: Class Deviation—Ensuring Adequate COVID-19 Safety Protocols for Federal
Contractors

Effective immediately, contracting officers shall insert the clause 252.223-7999, Ensuring Adequate COVID-19 Safety Protocols for Federal Contractors (Deviation 2021-O0009), in the following solicitations, contracts, task orders, delivery orders, and modifications thereof that are for services (including construction) performed in whole or in part within the United States or its outlying areas:

- Solicitations issued on or after October 15, 2021, and contracts, task orders, and delivery orders awarded pursuant to those solicitations, that are expected to exceed the simplified acquisition threshold (SAT).
- Contracts, task orders, and delivery orders, awarded on or after November 14, 2021, from solicitations issued before October 15, 2021, that exceed the SAT.
- All extensions or renewals, issued on or after October 15, 2021, of contracts, task orders, and delivery orders that exceed the SAT.
- All options exercised, on or after October 15, 2021, on contracts, task orders, and delivery orders that exceed the SAT.
- Existing indefinite-delivery, indefinite-quantity contracts that are anticipated to have orders that exceed the SAT and that have an ordering period that extends beyond October 15, 2021.

Class Deviation 2021-O0009

Ensuring Adequate COVID-19 Safety Protocols for Federal Contractors

The deviation clause is not required in contracts or subcontracts with Indian Tribes under the Indian Self-Determination and Education Assistance Act (the exclusion would not apply to a procurement contract or subcontract under the Federal Acquisition Regulation (FAR) to an Indian-owned or tribally-owned business entity).

In accordance with the Safer Federal Workforce Task Force Guidance and FAR 1.108(d)(2) and (3), contracting officers may insert the deviation clause in—

- Solicitations issued prior to October 15, 2021;
- Contracts, task orders, or delivery orders awarded before November 14, 2021, resulting from solicitations issued before October 15, 2021;
- Solicitations, contracts, task orders, and delivery orders that are valued at or below the SAT and are for services (including construction) performed in whole or in part within the United States and its outlying areas; or
- Solicitations, contracts, task orders, and delivery orders for the manufacturing of products.

When modifying existing contracts, task orders, or delivery orders in accordance with this deviation, contracting officers shall use a bilateral modification to incorporate the deviation clause.

This class deviation implements the requirements of Executive Order 14042, Ensuring Adequate COVID Safety Protocols for Federal Contractors, dated September 9, 2021, which directs agencies to include a clause in certain contracts to ensure that contractors comply with all guidance for contractor and subcontractor workplace locations published by the Safer Federal Workforce Task Force at: <https://www.saferfederalworkforce.gov/contractors/>.

This class deviation remains in effect until incorporated into the FAR or until otherwise rescinded. Please direct any comments or questions to Defense Pricing and Contracting, Contract Policy, at osd.pentagon.ousd-a-s.mbx.asda-dp-c-contractpolicy@mail.mil.

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N.M.1154945926 TENAGLIA.JOHN.M.1154945926
Date: 2021.10.01 11:02:24 -04'00'

John M. Tenaglia
Principal Director,
Defense Pricing and Contracting

Attachment
As stated

252.223-7999 Ensuring Adequate COVID-19 Safety Protocols for Federal Contractors (Deviation 2021-O0009)

As prescribed in Class Deviation 2021-O0009, Ensuring Adequate COVID-19 Safety Protocols for Federal Contractors, use the following clause:

ENSURING ADEQUATE COVID-19 SAFETY PROTOCOLS FOR FEDERAL CONTRACTORS (DEVIATION 2021-O0009) (OCT 2021)

(a) *Definition.* As used in this clause –

United States or its outlying areas means—

- (1) The fifty States;
- (2) The District of Columbia;
- (3) The commonwealths of Puerto Rico and the Northern Mariana Islands;
- (4) The territories of American Samoa, Guam, and the United States Virgin Islands; and
- (5) The minor outlying islands of Baker Island, Howland Island, Jarvis Island, Johnston Atoll, Kingman Reef, Midway Islands, Navassa Island, Palmyra Atoll, and Wake Atoll.

(b) *Authority.* This clause implements Executive Order 14042, Ensuring Adequate COVID Safety Protocols for Federal Contractors, dated September 9, 2021 (published in the *Federal Register* on September 14, 2021, 86 FR 50985).

(c) *Compliance.* The Contractor shall comply with all guidance, including guidance conveyed through Frequently Asked Questions, as amended during the performance of this contract, for contractor or subcontractor workplace locations published by the Safer Federal Workforce Task Force (Task Force Guidance) at <https://www.saferfederalworkforce.gov/contractors/>.

(d) *Subcontracts.* The Contractor shall include the substance of this clause, including this paragraph (d), in subcontracts at any tier that exceed the simplified acquisition threshold, as defined in Federal Acquisition Regulation 2.101 on the date of subcontract award, and are for services, including construction, performed in whole or in part within the United States or its outlying areas.

(End of clause)